

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

RUOEY LUNG ENTERPRISE CORP.,

Plaintiff,

v.

TEMPUR-PEDIC, INTERNATIONAL
INC.; TEMPUR-PEDIC SALES, INC.;
TEMPUR-PEDIC NORTH AMERICA
LLC; OPTIMA HEALTHCARE, INC.; and
APEX HEALTH CARE
MANUFACTURING, INC.,

Defendants.

Civil Action No. 09-CV-11550-GAO

ASCION, LLC AND
MARTIN RAWLS-MEEHAN

Plaintiffs,

v.

RUOEY LUNG ENTERPRISE CORP.
AND LUNG-TAN SHIH

Defendants.

Civil Action No. 09-CV-10293-GAO
Consolidated with the above action

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
OF NON-INFRINGEMENT AND INVALIDITY**

Under Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1, Defendants¹ respectfully move the Court to enter summary judgment that (1) Defendants do not infringe any claim of U.S. Patent No. 7,448,100 (the “100 patent”) and (2) that each of the claims of the ’100

¹ “Defendants” as used in this Motion means all of the parties in this consolidated case accused of patent infringement by RuoeY Lung, including Ascion, LLC, Martin Rawls-Meehan, Tempur-Pedic, Int’l, Tempur-Pedic Sales, Inc., Tempur-Pedic North America LLC, Optima Healthcare, Inc., and Apex Health Care Manufacturing, Inc.

patent is invalid as anticipated. If the Court does not grant summary judgment of non-infringement with regard to all of the accused beds, Defendants alternatively request that the Court enter summary judgment that the accused “one arm” beds do not infringe the ’100 patent, even under the doctrine of equivalents.

The grounds for this motion are set forth in Defendants’ Memorandum of Law in Support of Their Motion for Summary Judgment of Non-Infringement and Invalidity.

LOCAL RULE 7.1(a)(2) CERTIFICATION

The undersigned certifies that counsel for Defendants and counsel for Plaintiffs conferred in a good faith effort to resolve the issues raised by this Motion, but were unable to do so.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Defendants request the opportunity to present oral argument regarding this Motion

Respectfully submitted,

/s/ Michael A. Albert

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Dated: December 8, 2010

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CERTIFICATE OF SERVICE

I certify that this document is being filed through the Court's electronic filing system, which serves counsel for other parties who are registered participants as identified on the Notice of Electronic Filing (NEF). Any counsel for other parties who are not registered participants are being served by first class mail on the date of electronic filing.

/s/ Michael A. Albert